

## NATIONAL PARKS AIR TOUR MANAGEMENT ACT OF 1999

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JULY 29, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

### R E P O R T

[To accompany H.R. 717]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 717) to amend title 49, United States Code, to regulate overflights of national parks, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

### BACKGROUND

Commercial air tour operations have become exceedingly popular at a number of units of the National Park system and are growing in popularity in others. Many park areas have documented or estimated significant increases in the volume of commercial air tours over the last ten years. With these increases, concerns have been expressed by the National Park Service and some conservationists about the impact of aviation noise on the park and park visitors.

In response to this issue, in 1987, Congress enacted Public Law 100-91, commonly known as the National Parks Overflights Act (the Overflights Act). This act directed the Secretary of the Interior to conduct a study to determine the proper minimum altitude that should be maintained by aircraft when flying over units of the National Park system. The study was to also identify problems associated with overflights and provide information regarding the types of overflights that might be impacting park units. Finally, the Overflights Act required the FAA Administrator to assist the National Park Service (NPS) in carrying out this study.

As a result of this law, in 1994, the NPS submitted its Report to Congress stating that 70 percent of the managers whose parks were affected by overflights identified aircraft noise as a potential

sound problem. The report also indicated that 2–3% of all national park visitors indicated that aircraft noise had an impact on their experience.

In December of 1993, Secretary of Interior Babbitt and then-Secretary of Transportation Peña established an interagency working group (IWG) to further study ways to address the impacts of overflights on national parks. Both the Department of Transportation and the Department of the Interior agreed that increased air tours at national parks had diminished the national park experience for some park visitors, and that measures should be taken to preserve the park experience for ground visitors, while, at the same time, providing a comparable experience for air visitors to the national park. The FAA's role in this group has been to promote, develop and foster aviation safety and to provide for safe and efficient use of airspace. In addition, FAA has recognized the need to preserve, protect and enhance the environment by minimizing the adverse effects of aviation. The NPS's role has been to protect public land resources in national parks, preserve environmental values of those areas and provide for public enjoyment of those areas.

The President issued an Executive Order on April 22, 1996, directing the Secretary of Transportation, in consultation with the leadership of relevant Departments and Agencies, to establish a framework for managing air traffic over park units and to undertake additional transportation planning to address the impact of transportation on National Parks.

In addition, a Joint Oversight Field Hearing was held by the Subcommittee on National Parks and Public Lands and the Subcommittee on Aviation in St. George Utah on November 17, 1997. The hearing addressed issues surrounding air tours conducted over national parks. Topics discussed included whether restoring natural quiet to national parks was a reasonable goal, how many complaints per million visitors were acceptable and various ways to reduce noise over the parks.

In response to the President's mandate, in 1997, the FAA and the NPS established a National Parks Overflights Working Group to develop a plan for instituting flight restrictions over National Parks.

The working group was comprised of individuals with experience in aviation and in national park management. The Working Group held several public meetings and recommended a consensus proposal on overflights last year. The proposal included the recommendation that the group endorse legislation that captures the intent of its agreement. Accordingly, this legislation encompasses the Working Group's agreement and has been endorsed by it.

This group, including air tour industry representatives, environmentalists, and Native American representatives has agreed that this legislative package would establish a framework for the management of sightseeing aircraft over the National Park System. This legislation attempts to strike a balance between the rights of ground visitors to enjoy a national park with minimal intrusion, and in some cases, no intrusion from air tour noise, with the rights of air tour visitors to a park to enjoy a spectacular air visit.

The Committee's action in reporting this legislation should not be construed as implying that there is an uprising of park visitors

clamoring about aviation noise. Rather it is a recognition that there is a concern about this issue by some and a desire on the part of the Committee to ensure that this concern is addressed in a way that will continue to allow park visitors to enjoy the park by air.

Because all units of the National Park System are not equally affected by air tours, this legislation merely sets out a standard framework of principles to apply to all units of the NPS. Specific operational requirements for each individual unit would be negotiated on an individual basis with the FAA, NPS, air tour operators, affected Native Americans and the general public. The operational requirements would be based on the type of park, the demand for air tours, and any quiet technology available. Each park could conceivably have a different air tour management plan based on the demand for air tours and characteristics of the individual park.

#### BILL FRAMEWORK

The bill reaffirms that the FAA has the sole authority to control airspace over the United States. The Committee believes that although this legislation requires the NPS and the FAA to work together, it is important to note that this legislation does not in any way diminish the FAA's authority over U.S. airspace. The bill also reaffirms that the FAA has the authority to preserve, protect and enhance the environment by addressing the adverse effects of aircraft noise. In this case, that authority will include overflights of park and tribal lands. To regulate this particular issue, the FAA is directed to work in cooperation with the National Park Service, which is responsible for conserving the natural beauty and historical significance of national parks. The Committee realizes that this may be a difficult venture as both agencies have different priorities in this matter. However, the two agencies must work together to balance the need to protect the significant and sensitive areas of a national park while recognizing the importance of viable air tours over certain parks to all park visitors, especially those that may be infirm or handicapped. Through this cooperative process, the agencies will develop a viable air tour management plan that will balance these interests, while keeping the FAA's mandate of safe airspace.

It is important to recognize that this legislation represents a compromise between the interests of the air tour operators and those advocating quiet in the parks. This bill directs both agencies to work together to maintain to the extent possible both natural sound levels and the opportunity to view park areas using commercial sightseeing tours.

The bill requires that an air tour operator may not conduct commercial air tour operations over a national park without an approved air tour management plan, jointly agreed upon by FAA and NPS. There is an exception from this rule for existing operators that is discussed further below. This exception is to protect operations of current air tours during the time that an air tour management plan is being negotiated.

For purposes of this act, commercial air tour operations are defined as flights for compensation or hire in a powered aircraft where the purpose of the flight is sightseeing over a national park

or within ½ mile outside the boundary of a national park. The operator conducting the tour must be flying below a minimum altitude, to be determined by the Administrator of the FAA in cooperation with the Director of the National Park Service, or less than 1 mile laterally from any geographic feature within the park, to be considered a “commercial air tour.” The half mile boundary was implemented so that air tour operators could not circumvent the intent of this legislation by flying their air tours just outside the park boundary, thus exempt from regulation, while still causing noise disturbance. One half mile was considered a reasonable distance from the park that would prevent a viable air tour from being flown and any noise disturbances to a minimum.

The bill is also designed to require air tour management plans for air tours over tribal lands that are within or abutting a national park. Air tours over parks often fly over sacred tribal lands and Native Americans are sensitive to these disturbances over their cultural grounds. This legislation is not intended to apply the requirements of an air tour management plan to tribal lands that are not within or abutting a national park.

#### AIR TOUR CERTIFICATION

This bill would require existing air tour operators at any unit of the national park system to apply for authority under 14 C.F.R. part 119 to operate under part 121 or 135 of 14 C.F.R., as appropriate, to conduct air tours. These air tour operators must apply for certification within 90 days from the enactment of this bill. A narrow exception is outlined in the bill to allow some operators to continue to conduct air tours under 14 C.F.R. part 91 for up to five flights per month for any national park. These flights could be split between operators as long as the total number of flights operating at a single park does not exceed five. In order to meet the requirements for this exception, the operator must secure a letter of agreement from the Administrator and the superintendent of the national park, and must fit within the current regulatory exemption under part 119. The letter must specify the conditions under which the air tour operations will be conducted.

#### AIR TOUR MANAGEMENT PLAN

As discussed above, there may be some parks where, during the ATMP process, it is determined that there will be a limit on the frequency of air tour operations over a park. In these cases, the Administrator, in cooperation with the Director of the National Park Service, will develop an open competitive process for evaluating proposals from operators interested in providing air tours over the park. The Administrator and the Director shall consider appropriate factors, some of which are listed in the bill. These include the safety record of the person submitting the proposal or his or her pilots; quiet aircraft technology proposed to be used; experience of the person submitting the proposal with air tours over other parks; financial capability of the company; training programs provided for pilots; and the responsiveness of the person submitting the proposal to any relevant criteria identified by the NPS for the affected park.

To determine the number of operations allowed over a park, the Administrator and the Director shall take into consideration the provisions of an existing air tour management plan, the number of existing commercial air tour operators and current level of service and equipment provided by the operators, and the financial viability of each air tour operation.

The requirement for an air tour management plan (ATMP) for a national park is triggered when a person applies for authority to conduct a commercial air tour operation over that park. The objective of the ATMP will be to develop acceptable and effective measures to mitigate or prevent significant adverse impacts of commercial air tours upon the natural and cultural resources, visitor experiences and tribal lands of a national park so that air tours can continue to fly over the park. In some cases, acceptable and effective measures would be those that allow aerial viewing of the park with some noise disturbances, in other cases, where noise is a more critical aspect of the park experience, aerial viewing might have to be more restricted or even banned.

The ATMP itself may limit or prohibit commercial air tour operations in a variety of ways. This would include establishing conditions for the conduct of air tour operations including routes, maximum or minimum altitudes, time of day or event restrictions, maximum number of flights in a specific unit of time, intrusions on privacy of tribal lands and mitigation of adverse noise. The ATMP may include incentives for the adoption of quiet technology by air tour operators conducting air tours over the park to improve noise quality at the park. These incentives may include preferred routes and altitudes and relief from flight caps and curfews.

If the ATMP provides for a limit on air tour operations for any time period, it must provide a system for allocating the opportunities on an equitable basis. The rationale for the measures taken in the ATMP must be documented and set forth in the record of decision.

The contents of the ATMP are to be determined in the context of a public process. FAA and NPS are required to hold at least one public meeting with interested parties and publish the proposed ATMP for notice and comment in the Federal Register. The ATMP process must also comply with regulations promulgated under the National Environmental Policy Act that determine the parameters of an environmental review. In undertaking this process, the FAA is to be the lead agency and the NPS is a cooperating agency. The FAA would have the responsibility for ensuring the safe and efficient use of the nation's airspace and protecting the public health and welfare from aircraft noise. The NPS would have the responsibility for determining the extent of impacts on natural and cultural resources and visitor experiences. This bill adds an additional requirement to existing environmental requirements in that it requires both agencies, FAA and NPS, to sign the environmental review document. This is not a current requirement under NEPA and is intended to ensure that NPS and FAA agree on the ATMP. In addition, if there are any Native American tribal lands that may be overflown as part of an air tour operation over a park, that Tribe's participation shall be solicited. Once an ATMP is completed, amendments would only be made by the Administrator of the FAA,

in cooperation with the Director of the NPS. By including an amendment process, the bill allows an ATMP to be adjusted based on experiences or new technologies.

The bill sets out several factors to be used by the FAA in determining whether a flight is a commercial air tour operation and thus, regulated by an ATMP. To determine if a flight is an air tour operation, the Administrator may consider whether there was a holding out to the public of a willingness to conduct a sightseeing flight for compensation or hire. The Administrator may also look at whether the person offering the flight referred to areas or points of interest on the surface below the route of the flight either in written or oral narrative form as well as the area the person offering the flight operates in. For example, if the flight is offered only around areas where there are no points of interest, this could be a factor against a determination that an air tour is being offered. The Administrator may also look at the frequency of the flight offered and the route of the flight. If the flight is cancelled because there is poor visibility on the surface below the route of the flight, this could be a factor in a finding that a commercial air tour is being offered. The Administrator may also look at whether the inclusion of sight seeing flights is offered as part of a travel package by the person offering the flight. In addition, the legislation gives the Administrator the power to consider other factors that he or she may find appropriate.

The bill requires the FAA to grant interim operating authority (IOA) to an air tour operator who applies for operating authority at a park where he or she is an existing air tour operator. IOA allows the operator to fly its existing air tour routes over the park while an ATMP is being developed. The Committee realizes that, in some cases, the ATMP process may be drawn out, especially over parks where air tours are highly controversial. Historical flights for purposes of an IOA will be determined by the greater of the number of flights provided by the operator in the 12 months preceding enactment of this law or the average number of flights in a 12 month period over the preceding three years and for seasonal operations, the number of flights used during the season or seasons during that 12 month period. This provision allows the operator to account for a drop in operations in the preceding 12 months if he or she operated more flights per year on average for the preceding 3 years. The operator is not allowed to increase the number of flights determined to be allotted to him or her under the IOA without approval by the Administrator and the Director. However, in some cases, the operator may be able to receive more flights. This might occur if he introduces quiet technology in his flights or if another operator at the same park cuts down on its operations and leaves a demand for air tours.

The IOA must be published in the Federal Register with an opportunity for notice and comment. It may be revoked by the Administrator for cause and shall terminate 180 days after the establishment of an ATMP for that park. The IOA must promote the protection of national park resources; visitor experiences and tribal lands; safe operations of commercial air tours; the adoption of quiet technology; and shall allow for modifications based on experience if the

modifications improve the protection of park resources and values and tribal lands.

#### EXEMPTIONS

This legislation is not intended to apply to Grand Canyon National Park or any national park or land in Alaska as there is already legislation addressing park resources and values for both Alaska and the Grand Canyon (Public Law 100–91). If the legislation addressing the Grand Canyon should for some reason become ineffective, then this legislation will apply to the Grand Canyon National Park.

#### ADVISORY GROUP

The bill also sets up an advisory group to continue to provide insight and advice regarding commercial air tour operations over and near national parks. This group will deal with any issues that may arise with respect to implementation of this legislation, the development of quiet aircraft technology that could be used in commercial air tour operations and other measures that might be taken to accommodate the interests of visitors to national parks and provide recommendations to the Administrator and Director on these issues. The Administrator and the Director may also request that the group provide recommendations on safety, environmental and other issues related to commercial air tour operations. The group will be composed of representatives from the interest groups that have been involved in the regulatory and legislative process.

#### SECTION-BY-SECTION ANALYSIS

##### *Sec. 801.—Short title*

The short title is the “National Parks Air Tour Management Act of 1999”.

##### *Sec. 802.—Findings*

This section includes the following six findings relative to the parks overflights title of the bill.

- (1) The Federal Aviation Administration has sole authority to control airspace over the United States;
- (2) The Federal Aviation Administration has the authority to preserve, protect, and enhance the environment by minimizing, mitigating, or preventing the adverse effects of aircraft overflights of public and tribal lands;
- (3) The National Park Service has the responsibility of conserving the scenery and natural and historic objects and wildlife in national parks and of providing for the enjoyment of the national parks in ways that leave the national parks unimpaired for future generations;
- (4) The protection of tribal lands from aircraft overflights is consistent with protecting the public health and welfare and is essential to the maintenance of the natural and cultural resources of Indian tribes;
- (5) The National Parks Overflights Working Group, composed of general aviation, commercial air tour, environmental, and Native American representatives, recommended that the

Congress enact legislation based on the Group's consensus work product; and

(6) This Act reflects the recommendations made by that Group.

*Sec. 803.—Air tour management plans for national parks*

This section would require that commercial air tour operators conduct air tour operations over a National Park or tribal lands within or abutting a National Park in accordance with an approved air tour management plan (ATMP).

Prior to commencing air tour operations over a National Park, a commercial air tour operator must apply to the Administrator of the FAA for authority to conduct operations over the park. The Administrator of the FAA would prescribe operating conditions and limitations for each commercial air tour operator, and in cooperation with the Director of the National Park Service (NPS), develop an ATMP.

If an ATMP limits the number of commercial air tours over a national park area during a specified time frame, the FAA Administrator and the Director of the NPS would authorize certain commercial air tour operators to provide the service, in accordance with an open competitive process developed by the two agencies. The section sets forth the factors for consideration in authorizing the number of commercial air tours in this situation.

This section would require that commercial air tour operators over national parks and tribal lands meet the FAA safety criteria codified in 14 C.F.R. Parts 119, 121 or 135, as appropriate. Upon enactment of the legislation, existing commercial air tour operators would have 90 days to apply to the FAA for authority under 14 C.F.R. Part 119 to operate under Part 135 and Part 121.

Certain commercial air tour operators, if they meet the requirements set forth in 14 C.F.R. 119, could continue to conduct tours under the standards of 14 C.F.R. Part 91. The operator would be required to secure approval from the FAA and the NPS describing the conditions for flight operations. The total number of operations under this Part 91 exception would be limited to no more than five flights in any 30-day period over a single park.

Any new entrant commercial air tour operator would be required to apply for the authority before it can begin commercial air tour operations over a National Park or tribal lands. The FAA would be required to act on new entrant applications within 24 months.

Section 3 directs the FAA Administrator, in cooperation with the Director of the NPS, to develop and establish an ATMP for any National Park or tribal land within or abutting a National Park whenever a application is made, if an ATMP is not already in place. This requirement to establish an ATMP applies automatically if commercial air tours already exist over the National Park or tribal lands within or abutting National Parks.

An ATMP would be developed through a public process, with the appropriate environmental documentation, as required by the National Environmental Policy Act, to be signed by both the FAA and NPS, and with the final ATMP subject to judicial review.

The objective of the ATMP is to develop acceptable and effective measures to mitigate the significant adverse impacts, if any, of



commercial air tours upon the natural and cultural resources and visitor experiences at National Parks and tribal lands within or abutting National Parks.

Section 3 also lists the possible contents of an ATMP, and requires justification and documentation for any measures adopted in the ATMP.

Procedures for developing an ATMP are also outlined in this Section. The procedure would require at least one public meeting and publication of the ATMP in the Federal Register for notice and comment. Amendments to ATMPs would also be required to be published in the Federal Register for notice and comment.

Existing commercial air tour operators at national parks would apply for an ATMP to the FAA Administrator, and the FAA Administrator would grant these operators interim operating authority (IOA) until the ATMP for that National Park is complete.

The FAA Administrator would authorize the operator to conduct the same number of tour flights that the operator conducted over the past year (or the annual average of the past three years, whichever is higher). In order to increase operations, the commercial air tour operator would have to obtain the approval of the FAA Administrator and the NPS Director.

The IOA would be published in the Federal Register to provide notice and opportunity for comment. It could be revoked by the FAA Administrator for cause. In any event, it would terminate 180 days after an ATMP is developed for the National Park.

New entrants would not be allowed to conduct commercial air tour operations over a national park until the ATMP for that park is developed.

Once an ATMP is established for a specific park, it may be amended by the Administrator in cooperation with the Director of NPS. Any such amendment must be published in the Federal Register.

Section 3 specifically exempts Grand Canyon National Park and any NPS unit located in Alaska from the provisions of this section regarding the establishment of ATMPs.

Section 3 also contains definitions for terms used in this section.

#### *Sec. 804.—Advisory group*

Within one year of enactment, the FAA Administrator and the NPS Director would establish an advisory group to provide continuing advice and counsel with respect to the operation of commercial air tours over and near National Parks.

The membership would consist of a balanced group of representatives of general aviation, commercial air tour operators, environmental concerns, Indian tribes, the FAA, and the NPS. The FAA and the NPS representatives would serve alternating one-year terms as chairman of the advisory group.

Among its duties, the advisory group would provide recommendations on the designation of commonly accepted quiet aircraft technologies, which are to be given preferential treatment in ATMPs.

Section 4 also provides for the compensation of the advisory group and the non-application of the Federal Advisory Committee Act to the group.

*Sec. 805.—Reports**Overflight fee report*

Within 180 days of enactment, the FAA Administrator would report to Congress on the effects of overflight fees on the commercial air tour industry. The report would include the viability of a tax credit for operators equal to the amount of the fee charged by the NPS, as well as the financial effects that these proposed offsets are likely to have on FAA budgets and appropriations.

*Quiet aircraft technology report*

Not later than 2 years after the date of enactment, the FAA Administrator and the NPS Director are required to jointly transmit a report to Congress on the effectiveness of this Act in providing incentives for the development and use of quiet aircraft technology.

*Sec. 806.—Exemptions*

The section exempts the State of Alaska from this Act.

*Sec. 807.—Definitions*

This section sets forth definitions applicable to the Act.

## HEARINGS AND LEGISLATIVE HISTORY

On November 17, 1997, the Aviation Subcommittee and the National Parks and Public Lands Subcommittee held a hearing on air tour overflights of the National Park system.

## COMMITTEE CONSIDERATION

On March 11, 1999, the Full Committee met in open session and ordered H.R. 717 reported with no amendments, by voice vote with a quorum present. There were no recorded votes taken during Committee consideration of H.R. 717.

## ROLLCALL VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each rollcall vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with ordering H.R. 717 reported. A motion by Mr. Duncan to order H.R. 717 favorably reported to the House, without amendment, was agreed to by voice vote, a quorum being present.

## COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

## COST OF LEGISLATION

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison

prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

#### COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 717.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 717 from the Director of the Congressional Budget Office.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, March 19, 1999.*

Hon. BUD SHUSTER,  
*Chairman, Committee on Transportation and Infrastructure, House  
of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 717, the National Parks Air Tour Management Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact for federal costs is Victoria Heid Hall. The staff contact for the private-sector impact is Jean Wooster.

Sincerely,

BARRY B. ANDERSON  
(For Dan L. Crippen, Director).

Enclosure.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

##### *H.R. 717—National Parks Air Tour Management Act of 1999*

Summary: H.R. 717 would make clear that the Federal Aviation Administration (FAA) has the authority to regulate aircraft overflights affecting national parks (including tribal lands), and would establish a process for the FAA and the National Park Service (NPS) to coordinate the development and implementation of such regulations. Regulations governing overflights of national parks will likely be imposed under current law. Therefore, CBO estimates that implementing H.R. 717 would cause no significant change in federal spending over the 1999–2004 period. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

H.R. 717 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would have no significant impact on the budgets of state, local, or tribal governments.

H.R. 717 would impose private-sector mandates, as defined by UMRA, on operators of commercial air tours. The cost of the mandate would not exceed the annual threshold established by UMRA for private-sector mandates (\$100 million in 1996, adjusted for inflation).

Estimated cost to the Federal Government: CBO estimates that enacting H.R. 717 would not cause any significant change in FAA or NPS spending over the next five years. Based on information from the NPS and the FAA, we estimate that discretionary outlays to conduct planning and rulemaking for park overflights, complete air tour management plans (including environmental analyses), and monitor any overflight limits established in such plans will total about \$29 million over the 1999–2009 period. This process is already under way, and we expect that these costs will be incurred within the next several years under current law, assuming appropriation of the estimated amounts. CBO estimates that operating the joint advisory group that H.R. 717 would require would cost FAA and NPS a total of about \$25,000 each year from appropriated funds.

Estimated impact on state, local, and tribal governments: H.R. 717 contains no intergovernmental mandates as defined in UMRA and would have no significant impact on the budgets of state, local, or tribal governments.

Estimated impact on the private sector: H.R. 717 would impose new requirements for commercial air tour operations over national parks. CBO estimates that the total direct costs of the mandates would not exceed the annual threshold for private-sector mandates (\$100 million in 1996, adjusted for inflation).

The bill would require operators of commercial air tours to apply for authority from the FAA before conducting tours over national parks or tribal lands within or abutting a national park. CBO expects that the cost of applying to the FAA for such authority would be negligible.

H.R. 717 also would establish a process for the FAA and NPS to develop air tour management plans for every park where an air tour operator flies or seeks authority to fly. Those management plans, which CBO expects to be developed under current law, would affect all commercial air tour operations up to a half-mile outside each national park boundary. The plans could prohibit commercial air tour operations in whole or in part and could establish conditions for operation, such as maximum and minimum altitudes, the maximum number of flights, and time-of-day restrictions. CBO estimates that complying with the air tour management plans would impose no additional costs on the private sector beyond those that are likely to be imposed by FAA regulations under current law.

H.R. 717 would not apply to air tour operations over the Grand Canyon or Alaska. Those operations would be covered by other regulations.

Previous CBO estimate: On March 3, 1999, CBO prepared a cost estimate for S. 82, the Air Transportation Improvement Act, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on February 11, 1999. Title VI of S. 82 is similar to H.R. 717, and neither would cause a significant change in federal spending over the next five years.

Estimate prepared by: Federal costs: Victoria Heid Hall; Impact on the private sector: Jean Wooster.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act. (Public Law 104–4.)

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act. (Public Law 104–1.)

#### COMMITTEE CORRESPONDENCE

COMMITTEE ON RESOURCES,  
Washington, DC, July 6, 1999.

Hon. BUD SHUSTER,  
*Chairman, Committee on Transportation and Infrastructure,*  
*Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter regarding H.R. 717, the National Parks Air Tour Management Act of 1999, authored by Congressman John J. Duncan, Jr. The bill was referred to the Committee on Transportation and Infrastructure and additionally to the Committee on Resources.

I have reviewed the bill. Considering our close working relationship on nearly identical provisions in Title VIII of H.R. 1000, the Aviation Investment and Reform Act for the 21st Century, and that Aviation Subcommittee Chairman Duncan serves on both our Com-

mittees, I will not insist on fully exercising the Committee on Resources' referral. However, I do so with the understanding that when H.R. 717 is considered on the Floor, that it be amended by a manager's amendment or through a self-executing rule to mirror Title VIII of H.R. 1000 as passed by the House. This means that section 6 of H.R. 717 (a duplicative exemption for Alaska lands and waters) is deleted, that an exception for the Lake Mead Recreation Area is added, and language requiring that methodologies used to assess air tour noise in any unit of the National Park System (including the Grand Canyon) shall be based on reasonable scientific methods is added.

Of course, waiving the Committee on Resources' referral in this case does not waive the Committee's jurisdiction over any provision in H.R. 717 or similar provisions in other bills. In addition, I ask that you support my request to have the Committee on Resources represented on the conference on this bill, if a conference is necessary. Finally, I ask that you include this letter in the Committee on Transportation and Infrastructure's bill report.

I again appreciate the opportunity to work with you on this matter and look forward to seeing H.R. 717 with the amendments outlined in this letter considered by the House soon.

Sincerely,

DON YOUNG, *Chairman.*

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COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,  
Washington, DC, July 29, 1999.

Hon. DON YOUNG,  
*Chairman, Committee on Resources, House of Representatives,  
Longworth House Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter of July 6, 1999, regarding H.R. 717, the National Parks Air Tour Management Act of 1999.

I agree that this bill is in the jurisdictional interest of the Committee on Resources and I agree that by foregoing a sequential referral, the Committee on Resources is not waiving its jurisdiction over this bill.

H.R. 717 is identical to provisions that were included in the Transportation Committee reported version of H.R. 1000, the Aviation Investment and Reform Act, and we would like to continue our close working relationship on these matters. I agreed at that time that the Committee on Resources had a jurisdictional interest in these matters. Those provisions were modified during Floor consideration of H.R. 1000 to accommodate concerns raised by you. I agree that when H.R. 717 is considered on the House Floor, it will be modified to mirror the provisions passed by the House in Title VIII of H.R. 1000.

I will include this exchange of letters in the Committee report on H.R. 717. Thank you for your cooperation and your continued support of aviation matters.

With warm personal regards, I am

Sincerely,

BUD SHUSTER, *Chairman.*

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

## CHAPTER 401 OF TITLE 49, UNITED STATES CODE

## CHAPTER 401—GENERAL PROVISIONS

Sec.

40101. Policy.

	*	*	*	*	*	*	*
40125.	<i>Overflights of national parks.</i>						
	*	*	*	*	*	*	*

**§40125. *Overflights of national parks***

(a) IN GENERAL.—

(1) *GENERAL REQUIREMENTS.*—A commercial air tour operator may not conduct commercial air tour operations over a national park (including tribal lands) except—

(A) *in accordance with this section;*

(B) *in accordance with conditions and limitations prescribed for that operator by the Administrator; and*

(C) *in accordance with any applicable air tour management plan for the park.*

(2) *APPLICATION FOR OPERATING AUTHORITY.*—

(A) *APPLICATION REQUIRED.*—Before commencing commercial air tour operations over a national park (including tribal lands), a commercial air tour operator shall apply to the Administrator for authority to conduct the operations over the park.

(B) *COMPETITIVE BIDDING FOR LIMITED CAPACITY PARKS.*—Whenever an air tour management plan limits the number of commercial air tour operations over a national park during a specified time frame, the Administrator, in cooperation with the Director, shall issue operation specifications to commercial air tour operators that conduct such operations. The operation specifications shall include such terms and conditions as the Administrator and the Director find necessary for management of commercial air tour operations over the park. The Administrator, in cooperation with the Director, shall develop an open competitive process for evaluating proposals from persons interested in providing commercial air tour operations over the park. In making a selection from among various proposals submitted, the Administrator, in cooperation with the Director, shall consider relevant factors, including—

(i) *the safety record of the person submitting the proposal or pilots employed by the person;*

(ii) *any quiet aircraft technology proposed to be used by the person submitting the proposal;*

(iii) the experience of the person submitting the proposal with commercial air tour operations over other national parks or scenic areas;

(iv) the financial capability of the company;

(v) any training programs for pilots provided by the person submitting the proposal; and

(vi) responsiveness of the person submitting the proposal to any relevant criteria developed by the National Park Service for the affected park.

(C) *NUMBER OF OPERATIONS AUTHORIZED.*—In determining the number of authorizations to issue to provide commercial air tour operations over a national park, the Administrator, in cooperation with the Director, shall take into consideration the provisions of the air tour management plan, the number of existing commercial air tour operators and current level of service and equipment provided by any such operators, and the financial viability of each commercial air tour operation.

(D) *COOPERATION WITH NPS.*—Before granting an application under this paragraph, the Administrator, in cooperation with the Director, shall develop an air tour management plan in accordance with subsection (b) and implement such plan.

(3) *EXCEPTION.*—

(A) *IN GENERAL.*—If a commercial air tour operator secures a letter of agreement from the Administrator and the superintendent for the national park that describes the conditions under which the commercial air tour operation will be conducted, then notwithstanding paragraph (1), the commercial air tour operator may conduct such operations over the national park under part 91 of title 14, Code of Federal Regulations, if such activity is permitted under part 119 of such title.

(B) *LIMIT ON EXCEPTIONS.*—Not more than 5 flights in any 30-day period over a single national park may be conducted under this paragraph.

(4) *SPECIAL RULE FOR SAFETY REQUIREMENTS.*—Notwithstanding subsection (d), an existing commercial air tour operator shall apply, not later than 90 days after the date of enactment of this section, for operating authority under part 119, 121, or 135 of title 14, Code of Federal Regulations. A new entrant commercial air tour operator shall apply for such authority before conducting commercial air tour operations over a national park (including tribal lands). The Administrator shall act on any such application for a new entrant and issue a decision on the application not later than 24 months after it is received or amended.

(b) *AIR TOUR MANAGEMENT PLANS.*—

(1) *ESTABLISHMENT.*—

(A) *IN GENERAL.*—The Administrator, in cooperation with the Director, shall establish an air tour management plan for any national park (including tribal lands) for which such a plan is not in effect whenever a person applies for authority to conduct a commercial air tour operation over



*the park. The air tour management plan shall be developed by means of a public process in accordance with paragraph (4).*

*(B) OBJECTIVE.—The objective of any air tour management plan shall be to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tours upon the natural and cultural resources, visitor experiences, and tribal lands.*

*(2) ENVIRONMENTAL DETERMINATION.—In establishing an air tour management plan under this subsection, the Administrator and the Director shall each sign the environmental decision document required by section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) (including a finding of no significant impact, an environmental assessment, and an environmental impact statement) and the record of decision for the air tour management plan.*

*(3) CONTENTS.—An air tour management plan for a national park—*

*(A) may limit or prohibit commercial air tour operations;*

*(B) may establish conditions for the conduct of commercial air tour operations, including commercial air tour operation routes, maximum or minimum altitudes, time-of-day restrictions, restrictions for particular events, maximum number of flights per unit of time, intrusions on privacy on tribal lands, and mitigation of adverse noise, visual, or other impacts;*

*(C) may apply to all commercial air tour operations;*

*(D) shall include incentives (such as preferred commercial air tour operation routes and altitudes and relief from flight caps and curfews) for the adoption of quiet aircraft technology by commercial air tour operators conducting commercial air tour operations over the park;*

*(E) shall provide a system for allocating opportunities to conduct commercial air tours if the air tour management plan includes a limitation on the number of commercial air tour operations for any time period; and*

*(F) shall justify and document the need for measures taken pursuant to subparagraphs (A) through (E) and include such justifications in the record of decision.*

*(4) PROCEDURE.—In establishing an air tour management plan for a national park (including tribal lands), the Administrator and the Director shall—*

*(A) hold at least one public meeting with interested parties to develop the air tour management plan;*

*(B) publish the proposed plan in the Federal Register for notice and comment and make copies of the proposed plan available to the public;*

*(C) comply with the regulations set forth in sections 1501.3 and 1501.5 through 1501.8 of title 40, Code of Federal Regulations (for purposes of complying with the regulations, the Federal Aviation Administration shall be the lead agency and the National Park Service is a cooperating agency); and*

(D) solicit the participation of any Indian tribe whose tribal lands are, or may be, overflowed by aircraft involved in a commercial air tour operation over the park, as a co-operating agency under the regulations referred to in subparagraph (C).

(5) JUDICIAL REVIEW.—An air tour management plan developed under this subsection shall be subject to judicial review.

(6) AMENDMENTS.—The Administrator, in cooperation with the Director, may make amendments to an air tour management plan. Any such amendments shall be published in the Federal Register for notice and comment. A request for amendment of an air tour management plan shall be made in such form and manner as the Administrator may prescribe.

(c) DETERMINATION OF COMMERCIAL AIR TOUR OPERATION STATUS.—In making a determination of whether a flight is a commercial air tour operation, the Administrator may consider—

(1) whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire;

(2) whether a narrative that referred to areas or points of interest on the surface below the route of the flight was provided by the person offering the flight;

(3) the area of operation;

(4) the frequency of flights conducted by the person offering the flight;

(5) the route of flight;

(6) the inclusion of sightseeing flights as part of any travel arrangement package offered by the person offering the flight;

(7) whether the flight would have been canceled based on poor visibility of the surface below the route of the flight; and

(8) any other factors that the Administrator considers appropriate.

(d) INTERIM OPERATING AUTHORITY.—

(1) IN GENERAL.—Upon application for operating authority, the Administrator shall grant interim operating authority under this subsection to a commercial air tour operator for commercial air tour operations over a national park (including tribal lands) for which the operator is an existing commercial air tour operator.

(2) REQUIREMENTS AND LIMITATIONS.—Interim operating authority granted under this subsection—

(A) shall provide annual authorization only for the greater of—

(i) the number of flights used by the operator to provide such tours within the 12-month period prior to the date of enactment of this section; or

(ii) the average number of flights per 12-month period used by the operator to provide such tours within the 36-month period prior to such date of enactment, and, for seasonal operations, the number of flights so used during the season or seasons covered by that 12-month period;

(B) may not provide for an increase in the number of commercial air tour operations conducted during any time period by the commercial air tour operator above the num-

ber that the air tour operator was originally granted unless such an increase is agreed to by the Administrator and the Director;

(C) shall be published in the Federal Register to provide notice and opportunity for comment;

(D) may be revoked by the Administrator for cause;

(E) shall terminate 180 days after the date on which an air tour management plan is established for the park or the tribal lands;

(F) shall promote protection of national park resources, visitor experiences, and tribal lands;

(G) shall promote safe operations of the commercial air tour;

(H) shall promote the adoption of quiet technology, as appropriate; and

(I) shall allow for modifications of the operation based on experience if the modification improves protection of national park resources and values and of tribal lands.

(e) EXEMPTIONS.—

(1) IN GENERAL.—Except as provided by paragraph (2), this section shall not apply to—

(A) the Grand Canyon National Park;

(B) tribal lands within or abutting the Grand Canyon National Park; or

(C) any unit of the National Park System located in Alaska or any other land or water located in Alaska.

(2) EXCEPTION.—This section shall apply to the Grand Canyon National Park if section 3 of Public Law 100–91 (16 U.S.C. 1a–1 note; 101 Stat. 674–678) is no longer in effect.

(f) DEFINITIONS.—In this section, the following definitions apply:

(1) COMMERCIAL AIR TOUR OPERATOR.—The term “commercial air tour operator” means any person who conducts a commercial air tour operation.

(2) EXISTING COMMERCIAL AIR TOUR OPERATOR.—The term “existing commercial air tour operator” means a commercial air tour operator that was actively engaged in the business of providing commercial air tour operations over a national park at any time during the 12-month period ending on the date of enactment of this section.

(3) NEW ENTRANT COMMERCIAL AIR TOUR OPERATOR.—The term “new entrant commercial air tour operator” means a commercial air tour operator that—

(A) applies for operating authority as a commercial air tour operator for a national park; and

(B) has not engaged in the business of providing commercial air tour operations over the national park (including tribal lands) in the 12-month period preceding the application.

(4) COMMERCIAL AIR TOUR OPERATION.—The term “commercial air tour operation” means any flight, conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over a national park, within  $\frac{1}{2}$  mile outside the boundary of any national park, or over tribal lands, during which the aircraft flies—

(A) *below a minimum altitude, determined by the Administrator in cooperation with the Director, above ground level (except solely for purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the Federal Aviation Administration requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or*

(B) *less than 1 mile laterally from any geographic feature within the park (unless more than  $\frac{1}{2}$  mile outside the boundary).*

(5) *NATIONAL PARK.—The term “national park” means any unit of the National Park System.*

(6) *TRIBAL LANDS.—The term “tribal lands” means Indian country (as that term is defined in section 1151 of title 18, United States Code) that is within or abutting a national park.*

(7) *ADMINISTRATOR.—The term “Administrator” means the Administrator of the Federal Aviation Administration.*

(8) *DIRECTOR.—The term “Director” means the Director of the National Park Service.*

